OSAMA BIN-LADEN, *JIHĀD*, AND THE SOURCES OF INTERNATIONAL TERRORISM

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I. INTRODUCTION

Two documents released in the 1990s—the 1996 "Declaration of War against the Americans Occupying the Land of the Two Holy Places"[1] and the 1998 "Declaration of the World Islamic Front"[2]—provide key insights towards understanding Osama bin-Laden's vision of modern Islamacist terrorism.[3] These texts provide the philosophical and theological framework of *jihād* as utilized by bin-Laden to justify international terrorism; they make clear that he sees the United States as not just an enemy but as a modern-day Crusader bent on occupying the holy places of Islam.[4] Bin-Laden's use of Crusade imagery in these texts is significant: he saw the American presence in Saudi Arabia before, during, and after the 1991 Gulf War as a "Crusader" occupation of the holy places of Islam and therefore "a clear declaration of war on God, his messenger [Mohammad], and Muslims."[5] To explain this metaphor, I will

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1. See the translation at *U.S. Hails Capture of Suspected Sept. 11 Mastermind*, ONLINE NEWSHOUR, *available at* http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html (last visited Mar. 24, 2003).

2. See the translation at *Text of Fatwah Urging Jihad Against Americans, available at* http://www.ict.org.il/articles/fatwah.htm (last visited Mar. 24, 2003) [hereinafter *Text of Fatwah*]; my thanks to Professor Glenn Reynolds of the University of Tennessee School of Law for this reference. The Arabic-language text of this document is available at *World Islamic Front for Jihad Against Jews and Crusaders: Initial "Fatwa" Statement, at* http://www.library.cornell.edu/colldev/mideast/fatw2.htm (last visited Apr. 7, 2003) [hereinafter *World Islamic Front*].

3. For an introduction to the conflict between Islamic and Western societies, see BERNARD LEWIS, WHAT WENT WRONG? THE CLASH BETWEEN ISLAM AND MODERNITY IN THE MIDDLE EAST 1 (2002).

4. *See Text of Fatwah, supra* note 2. For the Crusades, *see generally* BERNARD HAMILTON, THE CRUSADES: SUTTON POCKET HISTORIES 1 (1998); JONATHAN RILEY-SMITH, THE CRUSADES: A SHORT HISTORY 1 (1987); and CAROLE HILLENBRAND, THE CRUSADES: ISLAMIC PERSPECTIVES 1 (1999).

5. *See Text of Fatwah, supra* note 2.

briefly investigate the Islamic idea of *jihād* before and during the Crusades, and how the idea of *jihād* began to take on a double meaning, as both a form of moral self-improvement and as holy war on behalf of the Islamic faith. I shall also analyze bin-Laden's use of the concept of *jihād*, tracing its development and evolution from the earliest days of Islamic empire to the present day to show how this concept has been used and transformed by radicalized Islamacists, thus providing a historical background to international terrorism in the late twentieth and early twenty-first century.[6]

II. WHAT IS *JIHĀD*?

"*Jihād* is perhaps the most loaded word in the lexicon of Islam's relations with the West;"[7] its precise meaning has caused a great deal of controversy among Western scholars of Islam. Commonly translated as "holy war,"[8] *jihād* literally means to strive, to exert oneself, to struggle, or to take extraordinary pains;[9] it can mean a form of moral self-improvement as well as holy war on behalf of the Islamic faith.[10]

A. *Greater jihād*

Scholars make a distinction between the so-called "lesser *jihād*" of religiously-grounded warfare and the "greater *jihād*" against evil,[11] a distinction that originated with the Prophet Mohammad who told his followers

6. *See generally* Lawrence Wright, *The Man Behind Bin Laden*, THE NEW YORKER, Sept. 16, 2002, at 56-85; *see also* Bernard Lewis, *License to Kill: Usama bin Laden's Declaration of Jihad*, FOREIGN AFFAIRS 77.6 (Nov./Dec. 1998) at 14-19.

7. Martin Kramer, *Jihad 101*, THE MIDDLE EAST QUARTERLY 9.2 (Spring, 2002), *available at* http://www.meforum.org/article/160 (last visited Apr. 7, 2003).

8. Strictly speaking, there is no term in classical Arabic which means holy war. BERNARD LEWIS, THE POLITICAL LANGUAGE OF ISLAM 71 (1988). The closest equivalent would be "*harb muqaddasah*," a term which does not appear in the Qur'ān or any other classical Arabic text. *Id.* at 71-72; *see also* Richard Ostling, *Scholars Say Osama Bin Laden is Beyond the Bounds of Islamic Teachings on War*, ASSOCIATED PRESS (Sept. 21, 2001).

9. *See* REUVEN FIRESTONE, JIHAD: THE ORIGIN OF HOLY WAR IN ISLAM 16 (1999). *See generally* OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 369-73 (1995); *see also* Douglas E. Streusand, *What Does Jihad Mean?* THE MIDDLE EAST QUARTERLY 4.3 (Sept. 1997), *available at* http://www.meforum.org/pf.php?id=357(last visited Apr. 7, 2003). *But see* Noor Mohammad, *The Doctrine of Jihad: An Introduction* 3 J.L. & RELIGION at 381-98, who argues that *jihād* is a form of "political housekeeping through the elimination of the rule of those considered to be 'un-Islamic.'" *Id.* at 395-96.

10. The consequences of this definitional problem are highlighted by Daniel Pipes, Commentary: *Jihad and the Professors*, *at* http://commentary.org/ppipes.htm (last visited Apr. 8, 2003).

11. *See* MALISE RUTHVEN, ISLAM: A VERY SHORT INTRODUCTION 115 (1997); *see also* FIRESTONE, *supra* note 9, at 17.

after a battle that "We return from the lesser *jihād* to the greater *jihād*," a more difficult and important struggle for one's soul.[12]

The Washington-based Council on American-Islamic Relations follows this interpretation, stating that "*[j]ihād* does not mean holy war:"[13] instead, it "is a central and broad Islamic concept that includes struggle against evil inclinations within oneself, struggle to improve the quality of life in society, struggle in the battlefield for self-defense (*e.g.*, having a standing army for national defense), or fighting against tyranny or oppression."[14]

If "militancy is not the essence of *jihād*," then the west sees *jihād* as an Islamic war against Christians only because western thought has been heavily influenced by the Crusades and medieval Christian ideas about holy war.[15] However, the doctrine of *jihād* was codified during the Muslim conquests of the eighth century,[16] long before Pope Urban II preached the First Crusade in 1095.[17]

B. Lesser *jihād*

"[T]he interpretation of *jihād* as intellectual struggle is a political accommodation not well founded on Islamic theology."[18] As Bernard Lewis has noted, "the overwhelming majority of classical theologians, jurists, and traditionalists [who study the *hadith* tradition] . . . understood the obligation of *jihād* in a military sense."[19] In the Qur'ān, the word *jihād* is frequently followed by the phrase "in the path of God" in order to describe warfare against the enemies of Islam, thus "sacraliz[ing] an activity that otherwise might have appeared as no more than the tribal warfare endemic in pre-Islamic

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12. JOHN L. ESPOSITO, UNHOLY WAR: TERROR IN THE NAME OF ISLAM 28 (2002). *See also* Roxanne L. Euben, *Jihad and Political Violence*, CURRENT HISTORY, Nov. 2002, at 368.

13. *See About Islam and American Muslims*, Council on American-Islamic Relations home page, *at* http://www.cair-net.org/asp/aboutislam.asp (last visited Mar. 24, 2003).

14. *Id.*

15. AHMED RASHID, JIHAD: THE RISE OF MILITANT ISLAM IN CENTRAL ASIA 1-2 (2002). *See also* Roy Parviz Mottahedeh & Ridwan al-Sayyid, *The Idea of the Jihad in Islam before the Crusades*, *in* THE CRUSADES FROM THE PERSPECTIVE OF BYZANTIUM AND THE MUSLIM WORLD 23-29 (Angeliki E. Laiou & Roy Parviz Mottahedeh eds., 2001) (reviewing the nature and normative theories of *jihād* from the first Islamic century through and beyond the crusading period).

16. *See id.* at 26 (how *jihād* as "obligatory aggressive war" became the prevalent opinion in the second half of the eighth century); *see also* Euben, *supra* note 12, at 368 (Qur'ānic passages from the later, Medinan, period take precedence over earlier, Meccan, revelations and thus *jihād* is to be interpreted as active warfare).

17. *See generally* RILEY-SMITH, *supra* note 4, at 1-17.

18. Andrew Grossman, *Finding the Law; Islamic Law (Sharia), available at* http://www.llrx.com/features/islamiclaw.htm (last visited Apr. 7, 2003). *See also* Abu Fadl, *Greater and Lesser Jihad*, NIDA'UL ISLAM, *available at* http://www.islam.org.au/articles/26/jihad.htm (last visited Apr. 9, 2003); *but see* the Muslim apologia at *What is Jihad*, CURRENT ISSUES IN ISLAM, *available at* http://www.unn.ac.uk/societies/islamic/_current/main.htm (last visited Mar. 24, 2003).

19. LEWIS, *supra* note 8, at 72.

Arabia;"[20] the word *jihād* has for centuries meant "fighting in God's path" in ordinary Muslim usage.[21] Generally speaking, *jihād* became understood as meaning "any act of warring authorized by legitimate Muslim authorities on behalf of the religious community and determined to contribute to the greater good of Islam or the community of Muslims, either in part or in whole."[22]

Its explicit political aim is the establishment of Muslim rule in a world divided into Muslim and non-Muslim camps, the *Dar al-Islam* (House of Islam) and *Dar al-Harb* (House of War).[23] While this implies perpetual warfare between Muslims and non-Muslims, it does not mean the eradication or conversion of the latter, for the Qur'ān specifically forbids conversion by force.[24]

The suppression of other faiths implicit in *jihād* is part of a struggle to establish God's rule on earth by continuous military action against non-Muslims in order to create an opportunity for Muslims to create a just political and social order.[25] This doctrine was applied by the Prophet Muhammad himself from the earliest days of the Islamic faith; not only did it continue to be applied for over a century until the last days of the Umayyad caliphate, it also provided the ideological framework for the caliphate,[26] a caliphate that some have argued that Osama bin-Laden intended to restore.[27]

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20. *See* Streusand, *supra* note 9. *But see* Euben, *supra* note 12, at 367-68 (the means of struggle or striving "in the path of God" are varied in the Islamic sources and it is unclear if *jihād* is justified only in self-defense or if "expansionist conquests against unbelievers" is also permitted); *see also* RUDOLPH PETERS, JIHAD IN CLASSICAL AND MODERN ISLAM 21-23 (1996).

21. KHALID YAHYA BLANKINSHIP, THE END OF THE JIHAD STATE: THE REIGN OF HISHAM IBN 'ABD AL-MALIK AND THE COLLAPSE OF THE UMAYYADS 293 n. 3 (1994). "[A]ctual war against unbelievers, whether idolaters or peoples of the book, had no theoretical limit and was most certainly implemented." *Id.* Reuven Firestone, *Conceptions of Holy War in Biblical and Qur'ānic Tradition*, J. REL. ETH. 99, 188 (1996). The first authoritative codification of Islamic law was in the nineteenth century. *See* MOTTAHEDEH & AL-SAYYID, *supra* note 15, at 23.

22. FIRESTONE, *supra* note 9, at 18.

23. *See* Streusand, *supra* note 9.

24. *See id.* The Qur'ānic verse is "Let there be no compulsion in religion." 'ABDULLAH YŪSUF 'ALI, THE MEANING OF THE HOLY QUR'ĀN (10th ed. 1999) [hereinafter *The Holy Qur'ān*] 2:256; *but see* IBN KHALDUN, THE MUQUDDIMAH 183 (167), who states, "in the Muslim community, holy war is a religious duty, because of the obligation to convert everybody to Islam either by persuasion or by force."

25. *See* Streusand, *supra* note 9. It does not matter if non-Muslims embrace Islam or if they agree to pay the *jizya*, the poll-tax paid as protection money by non-Muslims, although those who accepted Islam received the most favorable treatment. *See* BLANKINSHIP, *supra* note 21, at 11; *see also* J. J. SAUNDERS, A HISTORY OF MEDIEVAL ISLAM 33 (1965).

26. *See* BLANKINSHIP, *supra* note 21, at 11; *see also* SAUNDERS, *supra* note 25, at 33. The caliph is the political successor to Mohammad. *See* RUTHVEN, *supra* note 11, at 13.

27. *See, e.g.*, James Buchan, Special Supplement, *Terror In America Osama bin Laden: Inside the Mind of a Terrorist*, THE OBSERVER, Sept. 16, 2001, at 9. *But see* Timothy R. Furnish, *Bin Ladin: The Man Who Would Be Mahdi*, THE MIDDLE EAST QUARTERLY 9.2 (Spring 2002), *available at* http://www.meforum.org/article/159 (last visited Apr. 7, 2003) (as bin-Laden has neither a territorial base nor the support of respected Islamic jurists, his claim to the caliphate has limited support outside his al-Qaeda movement; however, there is precedent for self-declared Madhist movements, most recently Muhammad Ahmad in Sudan in 1881 and

1. The Holy Qur'ān and hadith

The Qur'ān, of course, is the foundation of Islam; for the pious Muslim it is not the word of the Prophet Mohammad, but the unadulterated word of God revealed to the Prophet through the Archangel Gabriel.[28] The doctrine of *jihād* is clearly spelled out in the Qur'ān: although the Qur'ān expressly forbids the killing of unarmed noncombatants,[29] Muslims are required to "fight in the cause of God" against unbelievers[30] or to make monetary contributions to the war effort.[31] The sayings of Mohammad, or *hadith*, are second main source of Islamic religious law and doctrine.[32] In the *hadith* tradition, *jihād* clearly means warfare: there are 199 references to *jihād* in the Bukhari *hadith* collection, and all 199 assume that *jihād* means fighting and war.[33]

2. The Kharijites

This was clearly the case during the first centuries of Islam. The Kharijites—their name means "those who go out"[34]—or Seceders were the first radical Islamic splinter group.[35] Perhaps best described as "ethical maximalists,"[36] they adopted a radical and militant form of *jihād*, believing that they were "God's army fighting a *jihād* against the forces of evil."[37] For the Kharijites, the Qur'ānic instruction to "Enjoin[] what is right and forbid[] what is wrong"[38] must be applied literally and without qualification; Muslims who did not share their strict and uncompromising beliefs were sinners, apostates, and the enemies of God.[39] The Kharijites were on the margins of Islamic society, both theologically and literally.[40]

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the 1979 seizure of the Great Mosque in Mecca that was part of an attempt to overthrow the Saudi monarchy).

28. *See* EMORY C. BOGLE, ISLAM: ORIGIN AND BELIEF 7 (1998).

29. *See The Holy Qur'ān* 2:190-192.

30. *See id.* at 2:190, 244; 9:38-41.

31. *See id.* at 57:10.

32. *See* RUTHVEN, *supra* note 11, at 21, 39. *See generally* M. Cherif Bassiouni & Gamal M. Badr, *The Shari'ah: Sources, Interpretations, and Rule-making*, 1 UCLA J. ISLAMIC & NEAR E. L. 135; *see also* IGNAZ GOLDZIHER, INTRODUCTION TO ISLAMIC THEOLOGY AND LAW, (Andras & Ruth Hamori trans., 1981).

33. *See* MUHAMMAD IBN ISMA'IL BUKHARI, THE TRANSLATION OF THE MEANING OF SAHIH AL-BUKHARI, (Muhammad Muhsin Khan trans., 1981), *available at* http://www.usc.edu/dept/MSA/fundamentals/ hadithsunnah/bukhari/052.sbt.html (last visited Apr. 7, 2003).

34. *See* SAUNDERS, *supra* note 25, at 66.

35. *See* RUTHVEN, *supra* note 11, at 56.

36. ANNEMARIE SCHIMMEL, ISLAM: AN INTRODUCTION 76 (1992).

37. *See* ESPOSITO, *supra* note 12, at 42.

38. *The Holy Qur'ān* 3:104.

39. *See* ESPOSITO, *supra* note 12, at 42.

40. Kharijite adherents survived in Oman and especially in North Africa. *See* SCHIMMEL, *supra* note 36, at 77; *see also* JOHN ALDEN WILLIAMS, THE WORD OF ISLAM 172-87 (1994).

III. INTERPRETATIONS OF *JIHĀD*

A. *Crusaders, Mongols, and Ibn Taymiyah*

1. *The Crusades*

Bin-Laden's constant references to the Crusades in his pronouncements against the West both before and after September 11th is in line with recent Muslim—particularly Arab—scholarship which reinterprets the Crusades in light of the nineteenth and twentieth century history of colonialism, Arab nationalism, and the creation of the Israeli state.[41] But the Crusaders' capture of Jerusalem initially attracted little attention in the Muslim world; although religiously significant,[42] under Muslim rule Jerusalem was never politically or administratively important.[43] Jerusalem was also in the middle of a conflict between the Isma'ili Shi'ite Fatamids in Egypt and the Sunni 'Abbasids in Baghdad, a struggle amplified by the Seljuq succession crisis that followed the death of Malikshah in 1092.[44] The Muslim world did not see the Crusades as being something separate from the long series of enemies—Turks and Bedouin—that they regularly fought in the Holy Land.[45] The Seljuq Turks saw the First Crusade as a distraction from their conflict with the Fatamids in Egypt; the Fatamids—who controlled Jerusalem in the 1090s—saw the arrival of European Crusaders as possible allies against the Seljuqs.[46] Medieval Muslim writers do not reveal a sense of shock or religious loss and humiliation:[47] the Syrian chronicler al-Azimi records simply that in 1099 "[the Crusaders] turned to Jerusalem and conquered it from the hands of the Egyptians."[48] The great counter-Crusade of the Muslim leader Saladin did not begin until nearly a century later, and only then in response to the constant raids on Muslim caravans to Mecca by the Crusader Reynald of Châtillon, lord of Kerak in what is now southern Jordan.[49] Furthermore, the Crusader

41. *See* HILLENBRAND, *supra* note 4, at 589-16. For the significance of bin-Laden's historical allusions, see Bernard Lewis, *The Revolt of Islam*, THE NEW YORKER, Nov. 19, 2002, at 50.

42. As the site of Muhammad's "Night Journey." *See* WILLIAMS, *supra* note 40, at 43-46.

43. *See* Carole Hillenbrand, *The Crusades Then and Now*, *at* http://www.caabu.org/press/briefings/crusades.html (last visited Apr. 7, 2003).

44. *See* HILLENBRAND, *supra* note 4, at 17, 38.

45. *See* BERNARD LEWIS, ISLAM IN HISTORY: IDEAS, PEOPLE, AND EVENTS IN THE MIDDLE EAST. 116-17 (2nd ed. 1993).

46. *See* Robert Irwin, *Muslim Responses to the Crusades*, HISTORY TODAY, April 1997, at 44.

47. *See* EMMANUEL SIVAN, INTERPRETATIONS OF ISLAM: PAST AND PRESENT 76 (1985).

48. *See* HILLENBRAND, *supra* note 4, at 64.

49. *See id.* In 1182-83 Reynald attacked Muslim shipping on the Red Sea and the Arabian ports that served the Holy Cities of Mecca and Medina; in 1184-85 he attacked a caravan of pilgrims to Mecca in violation of a treaty guaranteeing safe passage for pilgrims.

Kingdom of Jerusalem had "transgressed Islamic sacred space" by occupying the holiest Islamic buildings in Jerusalem, decorating the Dome of the Rock with crosses and statues and billeting the Templars in the al-Aqsa mosque.[50]

2. Ibn Taymiyah and the Mongols

The Crusades also produced a legal philosopher whose writing profoundly influenced modern radical Islamic ideology.[51] Ibn Taymiyyah (1268-1328) advocated and participated in jihad against both Crusaders and Mongols,[52] the latter, under the leadership of Genghis Khan's grandson Hulagu Khan, conquered and looted Baghdad and deposed the 'Abbasid Caliph Musta'sim in 1258.[53] Like the Kharijites before him and Osama bin-Laden after him, Ibn Taymiyyah believed that Muslims who did not live according to God's laws are unbelievers who should be excluded from the Muslim community.[54] He also built upon the long Islamic tradition—dating back to the Kharijites—of proclaiming *jihād* against Islamic rulers considered to be insufficiently Muslim,[55] in his case, the Mongols, who had adopted Islam but continued to observe their own traditional laws and not shari'ah, or Islamic law.[56] This provided the justification for Ibn Taymiyyah's *fatwah* against the Mongols: as they had not implemented shar'ia, they were apostates and as such, Muslim subjects of the Mongols were obliged to wage *jihād* against them.[57] Ibn Taymiyyah's anti-Mongol "war theology" was phrased in terms general and abstract enough to allow modern Islamicists to follow his lead in declaring *jihād* against both un-Islamic Muslim rulers and the West.[58]

B. Twentieth-century Islamicists

1. Hasan al-Banna' and Mawlana Mawdudi

This is the position adopted by Sayyid Qutb, "the Godfather . . . of Islamic radicalism,"[59] who built upon the works of Ibn Taymiyyah, Hasan al-Banna',[60] and Mawlana Mawdudi[61] to create the ideological framework of

See id. at 292-93; *see also* Lewis, *supra* note 6, at 17.

50. *See* HILLENBRAND, *supra* note 4, at 296-97.

51. *See* Streusand, *supra* note 9; *see also* ESPOSITO, *supra* note 12, at 45.

52. *See* Streusand, *supra* note 9.

53. *See* SAUNDERS, *supra* note 25, at 181-82; *see also* Streusand, *supra* note 9.

54. This is an implied death sentence. *See* JOANNES J. G. JANSEN, THE DUAL NATURE OF ISLAMIC FUNDAMENTALISM 33 (1997); *see also* Streusand, *supra* note 9.

55. *See* Streusand, *supra* note 9.

56. *See* JANSEN, *supra* note 54, at 36; *see also* ESPOSITO, *supra* note 12, at 46.

57. *Id.*

58. *Id.*

59. *See* ESPOSITO, *supra* note 12, at 56.

60. The founder of the Egyptian Muslim Brotherhood (1928).

61. The founder of the Pakistani *Jamaat-i-Islami* (1941).

jihād in the twentieth century.[62] For Hasan al-Banna' (1906-1949), the founder of the Muslim Brotherhood in Egypt, *jihād* described the process of reform, not revolution, first against European colonialism and later against corrupt, un-Islamic Muslim states: he saw *jihād* as defending the Muslim community and Islam itself against colonialism and injustice.[63] Mawlana Mawdudi (1903-1979), the founder of the *Jamaat-i-Islami* in Pakistan and the first modern Islamicist writer to systematically study *jihād*, blamed British and French colonialism for the decline of Muslim rule in the Near East and South Asia; he believed that nationalism (particularly Hindu secular nationalism) threatened Muslim identity and unity by replacing Muslim identity with one based on language or ethnicity.[64] Both Mawdudi and al-Banna' saw *jihād* as the means to bring about the Islamization of society and the world; for Mawdudi *jihād* was also something of a war of liberation to create a just Islamic state.[65] Furthermore, Mawdudi approved of Ibn Taymiyyah's formulation that "ostensibly Muslim rulers who neglect or transgress Islamic law or portions thereof can be deemed infidels and legitimately killed."[66]

2. *Sayyid Qutb*

But it is Sayyid Qutb (1906-1966) who is the intellectual father of *jihād* in the modern age. A champion of Islamic revival, he joined the Muslim Brotherhood in 1951, shortly after his return to Egypt from the United States.[67] His advocacy of pan-Islamic radicalism brought him into conflict with Gamal Abdel Nasser, an Arab nationalist who seized control of the Egyptian government in July 1952. Imprisoned and tortured in the aftermath of the Brotherhood's failed attempt to assassinate Nasser in October 1956, Qutb developed his revolutionary rhetoric in prison, where he wrote his most influential work, *Milestones*. Initially circulated in *samizdat* form, when it was finally published in 1964 it was almost immediately banned; the mere possession of a copy could lead to arrest for sedition.[68]

Qutb took the core of al-Banna' and Mawdudi's arguments and reshaped them in his call for action. The force of Qutb's rhetoric came from his "radical and imaginative break with the present" which "demolished the utopian

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62. *See* ESPOSITO, *supra* note 12, at 50.

63. *See id.* at 54. *See generally* Wright, *supra* note 6, at 56-85.

64. *See* ESPOSITO, *supra* note 12, at 54.

65. *See* Streusand, *supra* note 9.

66. *See* Euben, *supra* note 12, at 371, *citing* MAWLANA MAWDUDI, A SHORT HISTORY OF THE REVIVALIST MOVEMENT OF ISLAM 63-69 (Al-Ash'ari trans., 1972).

67. *See* Wright, *supra* note 12, at 61.

68. *See id.* at 62; *see also* ESPOSITO, *supra* note 12, at 58. *Milestones* was used as evidence against him at his trial and led to his death sentence and execution in August 1966. *See id.* The judge at his trial "offered the accused all the guarantees of fairness characteristic of a military court in a dictatorial state trying defendants broken by torture." GILLES KEPEL, MUSLIM EXTREMISM IN EGYPT: THE PROPHET AND PHARAOH 34 (John Rothschild trans., 1985).

thinking that underpinned [Arab] authoritarian nationalism . . . ."[69] For Qutb, the creation of an Islamic government was a divine commandment, and there could be no middle ground between the Dar al Islam and the Dar al-Harb: a Muslim must either reject ignorance and embrace *jihād* or be counted among the enemies of God.[70] Qutb saw *jihād* as the armed struggle defending Islam: the true enemy of Islam was the West, as illustrated by the Crusades, European colonialism, and the neo-colonialism of the Cold War era.[71]

3. Muhammad al-Farag

Critical to understanding bin-Laden's worldview is an obscure manifesto entitled *The Neglected Duty* by Muhammad al-Farag, a member of *Al-Jihad*, the organization responsible for Sadat's assassination.[72] For al-Farag, a Muslim lives in an Islamic polity only if its rulers follow Islamic law; rebellion against un-Islamic states is permissible and supported by a saying of the Prophet Muhammad: "If you have proof of infidelity [you] must fight it."[73] Al-Farag dismisses all peaceful ways put forward to establish an Islamic polity—the only way to do so is by *jihād*.[74]

Al-Farag's concept of *jihād* influenced many Islamicist revolutionaries, including Osama bin-Laden, who most likely learned of al-Farag's ideology through his second-in-command, the fugitive Dr Ayman al-Zawahiri, who appears with bin-Laden on a videotape where they discuss the *jihād* operations of September 11th.[75]

IV. OSAMA BIN-LADEN

Osama bin-Laden was born in 1957, the seventeenth son and one of the fifty-four children fathered by Muhammad bin-Oud bin-Laden, a Yemeni-born laborer who had won the favor of the Saudi royal family and whose construction company was given the contract to extend and maintain the holiest of Islamic sites, the Grand Mosque in Mecca.[76] After high school in Jedda, Osama studied engineering at Abdul Aziz University in the early 1970s,

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69. GILLES KEPEL, JIHAD: THE TRAIL OF POLITICAL ISLAM 26 (Anthony F. Roberts trans., 2002).

70. *See* ESPOSITO, *supra* note 12, at 60. *See also* Ruthven, *supra* note 11, at 10-11, 125, 135.

71. *See* ESPOSITO, *supra* note 12, at 61.

72. Ahmed S. Hashim, *The World According to Usama Bin Laden*, 18 NAVAL WAR COLLEGE REV. 11 (2001).

73. *Id. citing* JOHANNES J. G. JANSEN, THE NEGLECTED DUTY: THE CREED OF SADAT'S ASSASSIONS AND ISLAMIC RESURGENCE IN THE MIDDLE EAST (1986).

74. *See* Euben, *supra* note 12, at 371.

75. *See* Hashim, *supra* note 72, at 19; *see also* Wright, *supra* note 12, at 85.

76. *See* KEPEL, *supra* note 69, at 314; Jane Mayer, *The House of Bin Laden*, THE NEW YORKER, Nov. 12, 2001, *available at* http://newyorker/printable/?fact/011112fa_FACT3 (last visited Apr. 8, 2003).

regularly visiting Beirut to take advantage of the bars, casinos, and nightclubs of the "Paris of the Middle East."[77] Despite his drinking and womanizing in Beirut, he began showing a deeper interest in Islam, reflecting both the influence of his teachers at Abdul Aziz University—where his compulsory course in Islamic Studies was taught by Sayyid Qutb's brother Muhammad—and the Lebanese civil war, which broke out in 1975.[78] When the Soviets entered Kabul in 1979, bin-Laden raised money for the *mujahedeen*, eventually moving to Peshawar, Pakistan, where he helped organize thousands of volunteers for the Afghani *jihād* against the Soviets with the support of Mawdudi's *Jamaat-i-Islami*.[79] By 1986 bin-Laden had established a base of several jihadist camps in Afghanistan itself, this base, or in Arabic al-Qaeda, became the umbrella organization for bin-Laden's Islamic movement.[80]

A. *Declaration of War Against the Americans Occupying the Land of the Two Holy Places*

The philosophical basis for bin-Laden's opposition to the United States can be found in two documents: the "Declaration of War against the Americans Occupying the Land of the Two Holy Places" and "The Declaration of the World Islamic Front for *Jihād* against the Jews and the Christians."[81] In the first document, better known as the "Ladenese Epistle," bin-Laden declares that Muslims around the world have been massacred, their lands seized, and their wealth looted:

> [T]he people of Islam have suffered from aggression, iniquity, and injustice imposed on them by the Zionist-Crusader alliance . . . Their blood was spilled in Palestine and Iraq. The horrifying pictures of the massacre of Qana, in Lebanon, are still fresh in our memory. Massacres in Tajikistan, Burma, Kashmir, Assam, the Philippines, Somalia, Eritrea, Chechnya, and in Bosnia-Herzegovina took place, massacres that send shivers in the body and shake the conscience.[82]

77. *See* KEPEL, *supra* note 69, at 314; *see also* YOSSEF BODANSKY, BIN LADEN: THE MAN WHO DECLARED WAR ON AMERICA 3 (1999).

78. *Id.* Islamicists in Saudi Arabia claimed that the Lebanese civil war was God's punishment for the sins of Beirut. *See id.*

79. *See* KEPEL, *supra* note 69, at 314-15.

80. *See id.*

81. *See supra*, notes 1-2 and accompanying text.

82. *Id.*

As the United States provided some of the weapons used in these attacks, as at Qana,[83] or did not intervene to save the lives of Muslim civilians, as in Bosnia-Herzegovina and Chechnya, in bin-Laden's eyes the United States is to blame for their deaths.[84]

The focus of bin-Laden's anger was not the deaths of Muslim civilians but the continued American military presence in Saudi Arabia. Before the Saudi King Fahd invited coalition troops led by the United States, bin-Laden, like most other Islamicist *jihadis*, regarded the Ba'athist Iraqi leader Saddam Hussein as an apostate who should be deposed; bin Laden went so far as to offer the services of his followers in defense of Saudi Arabia after the invasion of Kuwait.[85] After the arrival of American troops in Saudi Arabia, the picture changed dramatically: Muslims must put aside their differences, for "if there is more than one duty to be carried out, then the most important should receive priority" and for bin-Laden, "there is no more important duty than pushing the American enemy out of the holy land."[86]

Bin-Laden quotes Ibn Taymiyyah, who argued that "when Muslims face a serious threat, they must ignore minor differences and collaborate to get the enemy out of the *dar-al-Islam*."[87] Likewise, a *fatwah* issued by the Tehran-sponsored "Partisans of the Sharia" supports bin-Laden's fight against the "Crusader-Zionist" alliance and provides additional theological and legal justification for supporting Saddam Hussein.[88] "[T]he Jews and the Christians have no business [in Iraq and Arabia] and have no legitimate, recognized mandate. Their presence poses a threat and their blood can be shed with impunity. In short, every Muslim must try in earnest to drive them away in humiliation."[89] Escalating the *jihād* against the United States justifies co-operating with Iraq.[90]

In accordance with the Qur'ānic injunction against killing unarmed non-combatants, the "Ladenese Epistle" concentrates on attacking American military forces in Saudi Arabia, including the possibility of acquiring weapons of mass destruction:

> Acquiring weapons for the defense of Muslims is a religious duty. . . . It would be a sin for Muslims not to try to possess

83. The death of hundreds of Lebanese civilians at Qana was part of the Israeli Operation Grapes of Wrath in 1996. *See* Hashim, *supra* note 72, at 24.

84. *See id.*

85. *See* KEPEL, *supra* note 69, at 316.

86. *See The Response: After the September 11th Attacks*, *available at* http://www.pbs.org/newshour/terrorism/ international/fatwa_1996.html (last visited Mar. 26, 2003).

87. *See* Hashim, *supra* note 72, at 24.

88. *See* BODANSKY, *supra* note 77, at 227.

89. *Id.*

90. *See id.*

> the weapons that would prevent the infidels from inflicting harm on Muslims.[91]

Bin-Laden also argues that terrorism against American forces is legitimate, stating that "terrorizing you [that is, the United States], while you are carrying arms on our land, is a legitimate and morally demanded duty."[92] At this point, bin-Laden is targeting only American military personnel stationed in Saudi Arabia, not American civilians. With the publication of "The Declaration of the World Islamic Front" in 1998 this was to change dramatically.

B. The Declaration of the World Islamic Front

On February 23, 1998, the London-based Arabic language newspaper *Al-Quds al-Arabi* published an edict signed by Osama bin-Laden and the leaders of militant Islamicist groups in Egypt, Pakistan, and Bangladesh.[93] Entitled "The Declaration of the World Islamic Front for *Jihād* against the Jews and the Christians," this edict opens with quotations from the more militant passages of the Qur'ān and the *hadith*, and then declares that "[t]he Arabian Peninsula has never . . . been stormed by any forces like the crusader armies now spreading in it like locusts, consuming its riches and destroying its plantations."[94] The declaration makes clear that bin-Laden sees the United States as not just an enemy but as a modern-day Crusader bent on occupying the holy places of Islam:

> So now they come to annihilate . . . this people and to humiliate their Muslim neighbors.
>
> . . . if the Americans' aims behind these wars are religious and economic, the aim is also to serve the Jews' petty state and divert attention from its occupation of Jerusalem and murder of Muslims there.
>
> The best proof of this is their eagerness to destroy Iraq, the strongest neighboring Arab state, and their endeavor to fragment all the states of the region such as Iraq, Saudi Arabia, Egypt, and Sudan into paper statelets and through

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91. *Interview with Osam bin Laden*, TIME, Dec. 23, 1998. Excerpt available at *Who is Osama bin Laden and What Does He Want*, FRONTLINE, *available at* http://www.pbs.org/wgbh/pages/frontline/shows/binladen/who/edicts.html (last visited Apr. 8, 2003). For information regarding bin-Laden's attempts to get weapons of mass destruction, see Kimberly McCloud & Matthew Osborne, *WMD Terrorism and Usama Bin Laden*, *at* http://cns.miis.edu/pubs/reports/Binladen.htm (last visited Apr. 8, 2003).

92. *See Bin Laden's Fatwa*, ONLINE NEWSHOUR, *available at* http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html (last visited Apr. 8, 2003).

93. The Arabic language text of this document can be found at *World Islamic Front*, *supra* note 2. *See generally* Lewis, *supra* note 6, at 14-19.

94. *See Text of Fatwah*, *supra* note 2.

> their disunion and weakness to guarantee Israel's survival and the continuation of the brutal crusade occupation of the Peninsula.[95]

These crimes amount to "a clear declaration of war on God, his messenger, and Muslims."[96] In the Qur'ān, the passages that refer to *jihād* as armed struggle can be divided into two categories: defensive and offensive.[97] In the case of a defensive war, *jihād* is an individual obligation, that is, responsibility for the defense of the community is the personal duty of all Muslims. However in offensive wars, the religious duty of *jihād* is a collective obligation: "the duty of the Caliph, and thus the obligation on the Muslim Community, is met when there are enough eligible volunteering to carry out the *jihād*."[98]

Indeed, "The Declaration of the World Islamic Front" closes with a *fatwah* against the United States:

> The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque [in Jerusalem] and the holy mosque [the Haram Mosque in Mecca] from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim.[99]

By declaring that Muslims are now fighting a *defensive* war against the American and Zionist "Crusaders," bin-Laden is declaring that *jihād* against the United States is the duty of every Muslim, and the obligation is "incumbent on each person, as they are capable of participating."[100]

V. CONCLUSION

More examples of bin Laden's thinking emerged after the September 11th attacks, but the Declaration of the World Islamic Front remains the fundamental statement of his motivation for jihad against United States and the West. His appeal is to the Islamic tradition of defensive jihad where it is an individual duty for all Muslims to take up arms against invaders. It also sets out the foundation for not just September 11th but also for other terrorist

95. *Id.*
96. *Id.*
97. *See* ESPOSITO, *supra* note 12, at 64.
98. John Kelsay, *Religion, Morality, and the Governance of War: The Case of Classical Islam*. J. REL. ETHICS 123, 126 (1990).
99. *See Text of Fatwah*, *supra* note 2.
100. Kelsay, *supra* note 98, at 126.

attacks linked to bin-Laden's al–Qaeda group, including the bombings of U.S. embassies in Nairobi, Kenya, and Dar-es-Salaam, Tanzania, in 1998 and the attack on the U.S.S. Cole in Aden, Yemen, in 2000. It is also justification for future attacks by "every Muslim who can do it in any country in which it is possible to do it," including the so-called shoe-bomber Richard Reid[101] and perhaps also John Allen Muhammad and John Lee Malvo, accused of fourteen "sniper" attacks in the area surrounding Washington, DC.[102]

This extreme interpretation of the idea of defensive jihad implicitly rejects much of the actual history of Muslim societies faith. By treating the simple presence of Christians and Jews in dominantly Muslim societies as an act of aggression, it does not leave room for the toleration of "people of the book" that is prescribed in the Qur'ān. Furthermore its reading of Islamic law is narrow and unyielding on doctrine and behavior alike: social developments identified with modernity are rejected as un–Islamic, even if large numbers of Muslims have accepted them without losing their faith.[103]

According to bin-Laden's *fatwah*, the United States is an aggressor against all of Islam because of the presence of American troops in Saudi Arabia. That U. S. troops are there by agreement of the Saudi government and that their purpose is to protect that country from the aggression of a neighbor bin-Laden himself once called to overthrow is immaterial. Likewise, the blockade against Iraq is viewed as an assault on the Iraqi people, even though Saddam Hussein's diversion of resources for his own purposes is the real cause of Iraqi suffering. The same could also be said of bin-Laden's hostility to American support for "the Jews' petty state" and Israel's "occupation of Jerusalem and murder of Muslims." For bin-Laden, the United States has become the embodiment of the *dar al–harb*, the house of war, engaged in aggression against Islam, even though millions of Muslims live in the United States and enjoy freedom of religion within its borders. By calling for any and all Muslims to kill any and all Americans, "civilians and military" alike "in any country in which it is possible to do it," bin-Laden's *fatwah* takes the radical line of jihad to new extremes.

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101. Reid, a British convert to Islam, attempted to detonate explosives concealed in his shoes while onboard an American Airlines flight from Paris to Miami. Michael Evans & Damian Whitworth, *Shoe Bomber Sparks Travel Terror Alert*, THE TIMES (London), Dec. 24, 2001. It is unclear if he had any connection to any organized terrorist group, but upon his release from a British jail, he attended the same Brixton mosque as Zacarias Moussaoui, accused of conspiracy in the September 11th plot. Julian Borger, *Shoe-bomber Reid to Plead Guilty*, THE GUARDIAN, Oct. 3, 2002.

102. Muhammad and Malvo, probably members of a Nation of Islam spin-off group called the "Five Percent Nation of Gods and Earths" had no visible connections to organized Islamic terrorist groups, but espoused sympathy for "gihad" [sic] in their letter to police before they were captured. Blaine Harden, *Retracing A Trail: The Role Of Religion: Impact of Suspects's Faith On Action Is Unclear*, N.Y. TIMES, Oct. 27, 2002, at A1.

103. *See* Roxanne L. Euben, *Premodern, Antimodern or Postmodern? Islamic and Western Critiques of Modernity*, REV. OF POL. 429, 429-59 (1997).

Yet bin-Laden lacks the religiously mandated authority to issue a *fatwah* to wage such holy war: he does not bear the mantle of succession to the Prophet. This is why he must describe the war against the United States as a defensive war: if the United States is guilty of "aggression," then the limits imposed on warfare by the Qur'ān and Islamic tradition, including the prohibitions on the intentional killing of unarmed noncombatants and the use of fire in warfare, are not in effect.[104] Bin-Laden's *jihād* places Islam against America, the West, and ultimately the rest of the non–Islamic world; his *jihād* also seeks to overthrow the mainstream views of Islamic tradition.[105]

104. Fire is prohibited as a weapon among Muslims because it is the weapon God will use in the last days. *The Holy Qur'ān* 82:14-15.

105. *See* ROGER SCRUTON, THE WEST AND THE REST: GLOBALIZATION AND THE TERRORIST THREAT (2002).